

REG-33-008 PROCEEDINGS INITIATED BY THE NEBRASKA DEPARTMENT OF REVENUE

008.01 The Nebraska Department of Revenue may initiate a proceeding against a person who has failed to comply with the tax laws administered by the Department.

008.01A Revocation hearing for sales and use tax permit, lodging tax permit, or litter fee license. Whenever the holder of a sales and use tax permit, lodging tax permit, or litter fee license fails to comply with any provision of the sales and use tax portion of the Nebraska Revenue Act of 1967, as amended, the Nebraska Visitors' Development Act, the Nebraska Litter Reduction and Recycling Act, or with any rule or regulation of the Nebraska Department of Revenue with regard to sales and use tax, lodging tax, or litter fee, the Nebraska Department of Revenue may initiate a hearing after giving the sales and use tax or lodging tax permitholder or litter fee licensee 20 days notice for the purpose of requiring the permitholder or licensee to show cause why his permit or license should not be revoked.

008.01A(1) The notice must be in writing specifying the time and place of the hearing and will be sent by certified mail, return receipt requested.

008.01A(2) The Nebraska Department of Revenue may suspend or revoke any or all of the permits or licenses at the conclusion of the hearing.

008.01B Suspension or revocation hearing for mechanical amusement device, motor vehicle fuels, interstate motor carrier's fuels, special fuels, aircraft fuels, cigarette, and grain and seed tax licenses or permits. In order to insure compliance with the tax laws, the Nebraska Department of Revenue may suspend or revoke a license or permit issued under the statutory provisions of the tax laws enumerated in Reg-33-008.01B by giving notice by certified mail, return receipt requested, to the permitholder or licensee.

008.01B(1) The licensee or permitholder may file a written petition with the Nebraska Department of Revenue within 30 days from the mailing of the suspension or revocation notice requesting reconsideration of such suspension.

008.01B(2) The content of the petition shall be similar to that found in Reg-33-004.01A.

008.01B(3) The Nebraska Department of Revenue has 10 days in which to grant a hearing on the petition.

008.01B(4) If a petition is not filed within the 30 day period, the suspended or revoked license or permit shall be canceled by the Nebraska Department of Revenue.

008.01C Suspension or revocation of county assessor certificates. Whenever a county assessor fails to attend and complete a course of instruction approved by the State Tax Commissioner pursuant to sections 77-415 through 77-420, R.R.S. 1943, and any applicable regulations, the State Tax Commissioner may hold a hearing after due notice to revoke or suspend the assessor's certificate.

008.01C(1) The county assessor will be given at least 10 days notice of the

time and place of the hearing.

008.01C(2) Notice of the hearing will be sent by certified mail, return receipt requested.

008.01C(3) Subsequent to the hearing, the State Tax Commissioner will issue a findings and order in regard to the suspension or revocation.

008.01C(4) If the findings and order is adverse to the county assessor, the county assessor may appeal to the District Court of Lancaster County within 30 days after service of the findings and order. The findings and order will be served by mailing a copy by certified mail, return receipt requested. Service will be completed when the findings and order is deposited in the mail.

008.01D Hearing to determine fraud or error by county's reporting taxes levied in county for distribution of Local Government Revenue Fund.

008.01D(1) Whenever it appears to the State Tax Commissioner that any county official fraudulently or erroneously certified the taxes levied within the county for purposes of distribution of the Local Government Revenue Fund, the State Tax Commissioner shall notify, by certified mail, return receipt requested, the county official concerned and the county board of the county involved setting forth the fraud or error.

008.01D(2) If such error is not corrected within 14 calendar days, the State Tax Commissioner shall schedule a hearing with five days notice, by certified mail, return receipt requested, being given to the county official concerned and to the chairperson of the county board.

008.01D(3) A copy of the notice of hearing will be sent to the State Treasurer, who will withhold transfer of all money to which the county may be entitled from the Local Government Revenue Fund until the State Tax Commissioner makes a decision.

008.01D(4) If it is determined that fraud or error has occurred, the State Tax Commissioner shall notify the State Treasurer of the proper amount of the Local Government Revenue Fund to be distributed to the county.

If it determined that no fraud or error has occurred, the entire amount withheld shall be distributed to the county.

008.01D(5) After the hearing the State Tax Commissioner shall make an order specifying the fraud or error that has occurred, whether such fraud or error has been corrected, if such error has not been corrected, and what corrective measures must be taken by the county.

008.01D(6) All parties will be notified by certified mail, return receipt requested, of the State Tax Commissioner's decision within ten days from the date of the hearing.

008.01D(7) The county may appeal the decision of the State Tax Commissioner to the district court of the county within 20 days after receipt of notice of the decision of the State Tax Commissioner in the same manner as appeals are taken from action of the County Board of Equalization under sections 77- 1510 and 77-1511, R.R.S. 1943. The appeal will be heard de novo without a jury.

008.01E Hearings to withhold distribution of money under Chapter 77, article 35, for failure of a county official to follow revenue laws, rules, and regulations.

008.01E(1) The Nebraska Department of Revenue shall notify, by certified mail, return receipt requested, the official concerned and the county board of the county involved setting forth any violation of rules, regulations, or revenue laws by a county official.

008.01E(2) If such violation is not corrected within 14 calendar days, the Nebraska Department of Revenue shall schedule a hearing with five days notice, by certified mail, return receipt requested, to the county official or officials concerned and the chairperson of the county board.

008.01E(3) The Nebraska Department of Revenue shall notify the Department of Administrative Services and the State Treasurer of such hearing and the State Treasurer will withhold distribution of all money that such county may be entitled to under the provisions of Chapter 77, article 35, until the Nebraska Department of Revenue has made a determination in regard to this matter.

008.01E(4) The Nebraska Department of Revenue shall enter an order setting forth the specific nature of the violation, whether the violation has ceased, and if not, what corrective actions must be taken.

008.01E(5) All parties concerned shall be immediately notified by certified mail, return receipt requested, of the Nebraska Department of Revenue's decision.

008.01E(6) The Nebraska Department of Revenue may, after five calendar days have elapsed from the date of hearing, determine whether or not corrective measures have been taken. If such corrective actions have been taken, all parties concerned will be notified by certified mail, return receipt requested.

008.01E(7) If it is determined that rules, regulations, directives, or laws were violated on the date of notice of hearing and are still being violated on the date of the hearing, the Department of Administrative Services, upon the completion of the necessary corrective action, shall distribute 80 percent of the money that has been withheld to the county with the balance being forfeited to the state general fund. If the corrective measures have not been completed by the date of the hearing, but corrective action has been taken by the date of the hearing, 90 percent of the amount so withheld shall be distributed to the county with the balance being forfeited to the state general fund. If the determination is that no rules, regulations, directives, or laws have been violated, the full amount of funds shall be distributed to the county.

008.01E(8) The county may appeal de novo the decision of the Nebraska Department of Revenue to the district court of the county within 20 days after receipt of notice of the decision of the Nebraska Department of Revenue in the same manner as appeals are taken from actions of the County Board of Equalization under sections 77-1510 and 77-1511, R.R.S. 1943.

008.01F Enforcement hearing for income and franchise tax and for "other taxes" which do not statutorily require issuance of permits or licenses. The Nebraska Department of Revenue may initiate a hearing for the purpose of enforcing the income tax provisions of the Nebraska Revenue Act of 1967, as amended, and the statutory provisions of any of the "other taxes" not specifically mentioned in Reg-33-008.

008.01G Collection of delinquent taxes from a responsible corporate officer or employee. The Nebraska Department of Revenue may collect delinquent sales, use, income, or withholding taxes from any corporate officer or employee who is required to collect, truthfully account for, or pay over any tax imposed under the Nebraska Revenue Act of 1967, as amended, and who willfully fails to do so. The imposition of personal liability for delinquent corporate taxes directly upon a responsible corporate officer or employee enables the Nebraska Department of Revenue to reach those primarily responsible for the corporation's failure to remit sales, use, income, or withholding taxes which are due and owing to the State of Nebraska.

A written notice and demand for payment must be mailed to the responsible corporate officer or employee by certified mail, return receipt requested, requesting payment of the taxes within 60 days. Any corporate officer or employee seeking to challenge the Nebraska Department of Revenue's determination as to his personal liability for the corporation's delinquent taxes must:

008.01G(1) Pay the full amount of the notice or pay a specified minimum amount as indicated in the letter and post a bond for the remainder.

008.01G(2) File a claim for refund of the amount so paid in accordance with the refund procedures set out in Reg-33-005 within 60 days of the demand for payment.

008.01H If the preceding requirements are satisfied, the Nebraska Department of Revenue will abate collection proceedings pending the outcome of the refund claim. However, if the Nebraska Department of Revenue determines that further delay in collection of the delinquent taxes from the responsible corporate officer or employee will jeopardize collection proceedings, nothing in this regulation will prevent the immediate collection of the taxes.

(Sections 57-709, 66-614, 77-303(2), 77-303.01, 77-415 through 77-420, 77-425, 77-2622, 77-2713(7), 77-27,118, 77-27,135, 77-3006, 81-1262, 81-1559, and 84-909(1), R.R.S. 1943, sections 77-2105, 77-2612, and 77-2705(6), R.S.Supp., 1984, sections 3-149, 66-418.03, 77-202, 77-2711(1)(a), and 77-27,119, R.S.Supp., 1985. January 3, 1990.)